THE HON'BLE SRI BILAL NAZKI,
THE ACTING CHIEF JUSTICE
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.12214 of 1999 & 15904 of 2002

Dated: 10-12-2007

W.P.No.12214 of 1999

Between:

1.T.Rajagopala Reddy and 3 others.

...Petitioners

and

1.Philomena Education Foundation India
A Charitable Trust, rep. by its Sole
Trustee, Dr.Y.Philomena,
Somajiguda, Hyderabad and 2 others.

...Respondents

W.P.No.15904 of 2002:

Between:

O.P.Jalan.

...Petitioner

and

1.The Municipal Commissioner,
Municipal Corporation of Hyderabad,
Hyderabad, and 2 others.

...Respondents

THE HON'BLE SRI BILAL NAZKI,
THE ACTING CHIEF JUSTICE
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos. 12214 of 1999 & 15904 of 2002

Dated: 10-12-2007

Common Order: (Per The Hon'ble Sri Bilal Nazki, The Acting Chief Justice)

Since the subject matter of both these Writ Petitions is one and the same, they are being disposed of by a common order.

W.P.No.15904 of 2002:

This Writ Petition has been filed by the petitioner, who is a resident of Gulmohar Avenue, Somajiguda, alleging that the second respondent-College, which was situated in the same locality, was making the construction on the rooftop and therefore, the first respondent-Municipal Corporation be directed to stop further constructions and to pull down any other illegal constructions made by the second respondent-College.

Counter-affidavit was filed by the second respondent-College denying the averments made in the affidavit, filed in support of the Writ Petition.

We have heard the learned Counsel for the parties.

During the hearing of the case, it transpired to this Court that the second respondent-College had not obtained any permission for the construction on the rooftop and certain deviations were made in the use of cellar also. A Commissioner being the Registrar (General) of this Court was also sent to inspect the property in question and he also certified that certain constructions were made beyond permission.

Now, the second respondent-College has also filed an affidavit dated 11-10-2007 admitting that certain constructions had been made without any permission, but, undertook to remove those constructions by 30th June, 2008. In Para 3 of the said affidavit, it is stated as under:

> 'It is submitted that the constructions on the rooftop and internal walls in the cellar of the subject

matter premises will be removed by 30th June, 2008, by which date all the academic examinations are likely to be completed.'

The learned Counsel for the petitioner and the learned Standing Counsel for the first respondent-Municipal Corporation have no objection to this course being adopted in view of the facts that the building in question is being used for a College and if a portion of the building is demolished immediately, the students studying in that College may suffer.

In this view of the matter, and in view of the undertaking given by the second respondent-College, we dispose of the Writ Petition directing the first respondent-Municipal Corporation not to initiate any action against the second respondent-College for demolition of constructions on the rooftop and for making changes in the cellar till 30th June 2008. However, if the second respondent-College fails to comply with the undertaking, the first respondent-Municipal Corporation can approach this Court and can also exercise its own powers to proceed with the matter.

W.P.No.12214 of 1999

This Writ petition has been filed by the petitioners, who are residents of Gulmohar Avenue, Somajiguda, challenging the permission granted by the second respondent-Municipal Corporation to the first respondent-College on 09-06-1994 for construction of a building.

Various contentions were raised by the writ petitioners to the effect that permission could have not been granted to the first respondent-College to construct building for running a College.

We had summoned the record pertaining to the sanction accorded by the second respondent-Municipal Corporation to the first respondent-College for construction of the building in question. The record of the second respondent-Municipal

Corporation also makes an interesting reading. The final permission does not even say as to how much land the first respondent-College owned and when the application for grant of permission was moved. Under the column “Extent of land owned”, there are three interrogation marks in the map. Thereafter, it appears from the record that the second respondent-Municipal Corporation itself was of the view that the permission granted was illegal and it should have not been granted and it also instituted an enquiry against its own Officers, who were responsible for granting such permission, but, later on, the enquiry appears to have been given up as those Officers had retired from service. However, the second respondent-Municipal Corporation issued notices to the first respondent-College but because of continuous litigation, no action could be taken by them. There are many issues raised by the writ petitioner, which, if accepted, would render the permission granted to the first respondent-College on
09-06-1994 invalid and illegal. But, we are conscious of the fact that these issues would, at best, be left to be decided by the second respondent-Municipal Corporation, more so, because the learned Counsel for the writ petitioner, the learned Counsel for the first respondent-College and the learned standing Counsel for the second respondent-Municipal Corporation have agreed to passing of the following order:

‘The second respondent-Municipal Corporation shall proceed to look into the legality of the permission granted to the first respondent-College on 09-06-1994 and examine whether the permission should have been granted or not, and if they come to a conclusion that the permission was unlawful and it could have not been granted, what steps can be taken. All this process shall, however, be made after giving sufficient notice to the first respondent-College and any other persons interested in the matter, and after considering their points of view.

Accordingly, the Writ Petitions are disposed of. However, it

is made clear that we have not gone into the question as to whether the permission granted to the first respondent-College on 09-06-1994 was lawful or not. If the first respondent-College or anybody files any suit in any civil Court concerning this property, in relation to demolition or permission or allied matters, such civil Court shall not pass any order of injunction without giving notice to the second respondent-Municipal Corporation.

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(Bilal Nazki,

A.C .J)

Dated 10th December, 2007

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(Ramesh Ranganathan, J)

Note:
A copy of this order be communicated to all the Civil Courts in Hyderabad.

B/o
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